

RECEIPT NUMBER

37614

8

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY CURTIS, individually and as
Personal Representative of the Estate of
ARIANA CURTIS, deceased,

Plaintiff,

-v-

WMK, INC., d/b/a MOBILITY WORKS,

Defendant.

05 - 70261

Case No. AVERN COHN.
HON.

MAGISTRATE JUDGE CAPEL,

WOLFGANG MUELLER (P43728)
Olsman, Mueller & James, P.C.
Attorney for Plaintiff
2684 West Eleven Mile Road
Berkley, MI 48072
(248) 591-2300

U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

05 JAN 25 PM 1:10

FILED

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, JEFFREY CURTIS, Personal Representative of the Estate of ARIANA CURTIS, deceased, by and through his attorneys, OLSMAN, MUELLER & JAMES, P.C., by WOLFGANG MUELLER, hereby complains against the Defendant, WMK, INC., d/b/a Mobility Products Design ("Mobility Products") and states the following:

1. Plaintiff is a citizen of the State of Michigan.
2. Defendant is a citizen of the State of Ohio and conducts business in the State of Michigan.
3. Jurisdiction is founded upon the residence of the parties and damages which exceed \$75,000, exclusive of interest and costs.

4. On or about May 30, 2004, at approximately 12:30 P.M., Plaintiff's decedent, Ariana Curtis, was driving a 1996 Pontiac Grand Am equipped with a left-foot accelerator pedal assembly that was designed and manufactured by Defendant. Defendant's Madison Heights, Michigan store sold and installed the accelerator pedal assembly on or about May 24, 2004. The assembly cost \$403.00.

5. On May 30, 2004, at approximately 12:30 P.M., Ariana Curtis drove her vehicle down her driveway and down her street, Private Shore Drive in Chesterfield, Michigan, to practice driving with the left-foot accelerator pedal in preparation for her obtaining certification from the State of Michigan. As Mrs. Curtis attempted to turn the vehicle around in a cul-de-sac at the end of the street, the vehicle suddenly accelerated as she attempted to slow the vehicle down by applying the brake pedal. Due to the design and manufacturing defects described below, she was unable to bring the car to a halt, and crashed into the side of a house located at 45420 Private Shore Drive.

6. Unable to stop the vehicle because of the design defects set forth below, the car plunged into Lake St. Clair and began to sink.

7. Several neighbors heard the crash against the house and observed the vehicle sinking into the lake. Mrs. Curtis began to panic and attempted to open the car door and window, but was unsuccessful. She was able to climb into the back seat as the vehicle continued to sink into the lake. Despite the attempts to rescue Mrs. Curtis, the vehicle sank and, with her screaming for help, plunged under the surface, causing her to drown.

8. As a direct and proximate result of Defendant's negligence and gross negligence set forth below, Plaintiff and Plaintiff's decedent have suffered the following injuries and damages:

- A. Extreme conscious pain and suffering by Ariana Curtis as she realized she was drowning;
- B. Loss of consortium damages allowed under Michigan's Wrongful Death Statute;
- C. Extreme emotional distress on the part of Jeffrey Curtis, who was present as rescue workers attempted to save his wife. Such emotional distress has manifested itself in sleeplessness, irritability, loss of appetite, nervousness, and other symptoms which have or may be present in the future;
- D. Economic losses.

COUNT I - NEGLIGENCE

9. Plaintiff incorporates by reference paragraphs 1 through 8 as if fully stated herein.

10. At the time of the design and manufacture of the subject left-foot accelerator pedal assembly, Defendant was under a duty to design the product to prevent an unreasonable risk of injury while the product was being used in a foreseeable manner.

11. Defendant breached the duty set forth above in at least the following respects:

- A. Negligently and recklessly designing the left-foot accelerator pedal assembly in such a manner that the left-foot pedal was subject to be depressed while a person attempted to depress the brake pedal;
- B. Negligently and recklessly failing to use appropriate and standard design principles, means and methods to identify the hazard of pedal misapplication;

- C. Negligently and recklessly failing to adequately test the left-foot pedal accelerator pedal assembly so as to identify and eliminate the hazard via design or guarding methods;
- D. Negligently and recklessly failing to adequately warn users, including Plaintiff's decedent, of the hazard of the pedal misapplication as a result of the defective design;
- E. Negligently and recklessly installing the left foot accelerator pedal assembly.

Accordingly, Plaintiff respectfully requests that the trier of fact award all damages allowed under Michigan's Wrongful Death Statute, as well as damages for conscious pain and suffering and negligent infliction of emotional distress. Plaintiff also request that this court award pre-judgment interest, costs and attorney fees so wrongfully incurred.

COUNT II - GROSS NEGLIGENCE

12. Plaintiff incorporates by reference paragraphs 1 through 11 as if fully stated herein.

13. Based upon information and belief, Defendant was aware of other instances of pedal misapplication, which had caused or could cause, personal injuries, prior to the date of manufacture of the subject assembly.

14. Despite such knowledge, Defendant failed to make any design changes to eliminate the unreasonable risk of injury.

15. Defendant's conduct constitutes a reckless disregard for the safety of foreseeable users, including Plaintiff's decedent and, thus, constitutes gross negligence.

16. As a direct and proximate result of the gross negligence described herein, Plaintiff's decedent and Plaintiff have suffered the damages set forth above.

Accordingly, Plaintiff respectfully requests that the trier of fact award all damages allowed under Michigan's Wrongful Death Statute, as well as damages for conscious pain and suffering and negligent infliction of emotional distress. Plaintiff also request that this court award pre-judgment interest, costs and attorney fees so wrongfully incurred.

COUNT III - BREACH OF IMPLIED WARRANTY

17. Plaintiff incorporates by reference paragraphs 1 through 16 as if fully stated herein.

18. Defendant was under a duty to manufacture and sell a product that was reasonably fit for its intended and foreseeable use. Plaintiff's decedent relied upon Defendant's expertise in selecting an appropriate left foot accelerator pedal assembly that would meet her needs.

19. Defendant failed to manufacture and sell a product that was reasonably fit for its intended, foreseeable and particular use.

20. Defendant's failure constitutes breach of implied warranties of merchantability and fitness for a particular purpose.

21. Defendant's breach of warranties was a direct and proximate cause of Plaintiff's decedent's death.

Accordingly, Plaintiff respectfully requests that the trier of fact award all damages allowed under Michigan's Wrongful Death Statute, as well as damages for conscious pain

and suffering and negligent infliction of emotional distress. Plaintiff also request that this court award pre-judgment interest, costs and attorney fees so wrongfully incurred.

Respectfully submitted,

OLSMAN, MUELLER, & JAMES, P.C.



By: WOLFGANG MUELLER (P43728)
Attorney for Plaintiff
2684 W. Eleven Mile Rd.
Berkley, MI 48072
(248) 591-2300

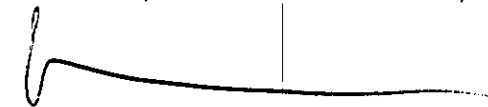
Dated: January 20, 2005

DEMAND FOR JURY TRIAL

Plaintiff, by and through his attorneys, OLSMAN, MUELLER & JAMES, P.C., hereby demand a jury trial in this matter.

Respectfully submitted,

OLSMAN, MUELLER & JAMES, P.C.



WOLFGANG MUELLER (P43728)
Attorney for Plaintiff
2684 W. Eleven Mile Rd.
Berkley Michigan 48072
(248) 591-2300

Dated: January 20, 2005

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: MACOMB

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

JEFFREY CURTIS, individually and as Personal Representative of the Estate of Ariana Curtis, deceased

(b) County of Residence of First Listed

Macomb**DEFENDANT**

WMK, INC., d/b/a MOBILITY WORKS

County of Residence of First Listed

Cuyahoga (Ohio)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE

LAND INVOLVED

AYERN CORN

Attorneys (If Known)

MAGISTRATE JUDGE CAPEL

(c) Attorney's (Firm Name, Address, and Telephone Number)

Wolfgang Mueller (P43728)
Olsman, Mueller & James, P.C.
2684 W. Eleven Mile Road
Berklev, MI 48072 (248) 591-2300

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|---|----------------------------|---------------------------------------|
| PLA | DEF | PLA | DEF |
| <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | Incorporated or Principal Place of Business in This State | | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen of Another | Incorporated and Principal of Business in Another State | | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | Foreign Nation | | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Com mod lies/Exchange <input type="checkbox"/> 875 Customer Challenge 12 LISC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395(f)) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 (specify) Transferred from another district
☐ 6 Multi district Litigation
☐ 7 Judge from District Appeal to Magistrate

V1. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. § 1332 - Based on diversity of citizenship of the parties.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$DEMAND

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) INSTRUCTIONS:** IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

1/20/08

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously discontinued or dismissed?

☐ YES ☒ NO

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ YES ☒ NO

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

NOTES: